United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-2483

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee, -against- ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, and JOSEPH M. VILLEGAS, Appellants.	Docket No. 74-2541 Docket No. 74-2492 Docket No. 74-2483

JOINT APPENDIX FOR APPELLANTS

ON APPEALS FROM JUDGMENTS
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STANLEY M. ZUCKERMAN, ESQ.,
Attorney for Appellant
ALLEYNE F. ROBINSON
570 Seventh Avenue
New York, New York 10009
(212) 947-0780

LOUIS [illegible] FORMAN, ESQS.,
Attorneys for Appellant
JOSE[illegible]ONIO ACOSTA ALVAREZ
1540 B[illegible]way
New York, New York 10036
(212) 582-3785

MANUEL TAXEL, Of Counsel

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JOSEPH M. VILLEGAS
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER, Of Counsel

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PAGINATION AS IN ORIGINAL COPY

D. C. Form No. 100
CRIMINAL DOCKET

JUDGE BONSAL 74 CRIM. 389

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	Bart M. Schwartz AUSA
(1)ALLEYNE F. ROBINSON	6068
(2)JOSE ANTONIO ACOSTA ALVAREZ a/k/a	
Jose Antonio, a/k/a Jose Acosta and	
(3)JOSEPH M. VILLEGAS	
	For Defendant:
	(1)Samuel Zucherinch
	570th Ave,NYC Wi 7-40 80

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine,			[illegible]	[illegible]	5			
Clerk,			[illegible]	[illegible]			5	
Marshal,								
Attorney,								
Commissioner's Court,								
~~*Witnesses,*~~ T:29, USC 402 &								
501(c),T:18 Sec 2 Embezzlement								
of Union Property(cts.2 - 11)								
T:18, 371 Conspiracy so to do(ct.1)								
(ELEVEN COUNTS)								

DATE	PROCEEDINGS
4-29-74	Filed Indictment.
4-13-74	Deft. Robinson(atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed by the Court at $5,000. P.R.B. secured by $500. cash & co-signed by wife, she has 1 week to sign bond. Deft. ordered photographed and fingerprinted.
	B/W ordered as to deft. Alvarez. Gurfein, J.
	Deft. Villegas(atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed at $5000. P.R.B. to be co-signed by wife within 48 hrs. Deft. ordered photographed and fingerprinted. Deft. ordered photographed and fingerprinted. Case assigned to Bonsal, J. for all purposes.
	Gurfein,J.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
5/13/74	J.A.A. Alvarez- bench warrant issued. Bonsal,J.		
5/13/74	Joseph Villegas- filed personal recognizance bond in the sum of $5,000.		
5/16/74	Bench warrant vacated to deft Alverez. Gurfein,J.		
5/20/74	Filed A. Robinson's notice of appearance by atty.		
5/13/74	A. Robinson -filed appearance bond in the sum of $5,000.		
5/24/74	Filed deft Alvarez' notice of motion re: bill of particulars,etc. ret: 5/30/74.		
5/21/74	Filed Stip & Order that the bail limits of deft. A. Robinson are extended to include Eastern District of New York. Bonsal,J.		
6/6/74	Filed J. Villegas' notice of motion re: dismissal ret: no date.		
5/16/74	Jose Alvarez- bench warrant issued on 5/13/74 vacated. Bonsal,J.		
8-19-74	Filed deft's (Alvarez) notice of motion to dismiss indictment.		
8/16/74	Filed Stip. & Order that the deft. A. Alvarez' bond is amended to provide that the deft.may go to Puerto Rico on condition that he return to the S.D.N.Y. on or before 8/27/74.Owen,J.		
9/23/74	Filed Govt.'s requests to charge.		
9/10/74	Hearing held on motion to suppress. Motion denied. Jury empanelled, trial begun. Bonsal,J.		
	cts. 11 dismissed as to all defts.		
	cts. 4-10 dismissed Alverez		
	cts. 2,3,6-10 dismissed Villegas on Govt.'s motion.		
9/11/74	Trial cont.'d.		
9/12/74	Trial cont.'d.		
9/13/74	Trial cont.'d. Motion to dismiss are denied.		

C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment N
9/16/74	Trial cont'd.	
9/19/74	Trial cont'd. and concluded. Jury verdict: Deft. Robinson Guilty cts 1,2,3,4,5,6,7,8,9,10 Deft. Villegas Guilty cts 1,4,5 Deft. Alverez Guilty cts 1,2,3 Jury polled. Pre-sentence report ordered. 11/7/74. Set for sentence. Bail cont.'d. Bonsal,J.	
10/18/74	Filed deft. Villegas' motion re: new trial.	
10/24/74	Jose A. Alverez--Filed papers origionally, filed with Magistrate Raby: (1) Docket Entry Sheet (2) Indictment S.D.N.Y. (3) Appointments of Counsel (Financial Aff. Only) (4) Appearance Bond(s)	
10/25/74	Filed suppl. memo. of law of Jose Antonio Acosta Alvarez in support of motion to dismiss indictment.	
11/14/74	Filed OPINION # 41405 - ...defts.' motions to set aside the verdict and to dismiss the indictment are therefore denied. The Court has reviewed the points raised by Villegas' motion for a new trial and finds them insufficient to support the granting of a new trial. Accordingly, that motion is denied. Bonsal,J. mailed notices.	
11/11/74	Filed deft. Joseph Villegas' notice of appeal from opinion of 11/7/74. Appeal allowed without prepayment of fees. Bonsal,J. mailed copies.	
11/7/74	Alleyne F.Robinson- (atty. present) Filed Judgment # - It is adjudged the deft. is sentenced to a term of ONE (1) YEAR on each of counts 1 thru 10, to run concurrently with each other. Execution of prison sentence is suspended and deft. is placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. -AND- Deft. is FINED $100.00 on each of counts 1 thru 10. TOTAL FINE of $1,000. is to be paid during deft.'s period of probation in such amounts and at such times as the Probation Officer may determine. Deft. is not to be committed for non-payment of fine. Bonsal,J.issued copies ent. 11/13/	
11/7/74	Jose Antonio Acosta Alvarez- (atty. present) Filed Judgment # - The imposition of prison sentence on counts 1,2 and 3 is suspended. Deft. is placed on probation for a period of THREE (3) MONTHS, subject to the Standing probation order of this Court - AND- Deft. is fined $250. on count 1. TOTAL FINE of $250. is to be paid with (3) MONTHS. Deft. is not to be committed for non-payment of fine.(issued copies.) Bonsal,J. ent. 11/13/74	
11/7/74	Joseph J. Villegas- (atty. present) Filed Judgment # - The imposition of prison sentence on counts 1,4 and 5 is suspended. Deft. is placed on probation for a period of THREE (3) MONTHS, subject to the standing probation order of this Court. - AND- deft. is FINED $250. on count 1. TOTAL FINE of $250. is to be paid during the deft.'s period of probation in such amounts and at such times as the Probation Officer may determine. Deft. is not to be committed for non-payment of fine. Bonsal,J. issued copies. ent.11/1	

DATE	PROCEEDINGS	Date of Judgment
11/14/74	J. Acosta- filed notice of appeal from judgment of 11/7/74. Appeal allowed without prepayment of fees. Bonsal,J. mailed copies.	
11/14/74	Filed Govt 's affdvt of Bart M. Schwartz re: review oc case file.	
11/14/74	Filed memo. of Jose Antonio Acosta Alvarez inopposition to Govt 's motion to introduce "other similar acts".	
11/14/74	Filed Govt.'s requests for the voir dire.	
11/14/74	Filed Govt.'s memo. of law re: identification of the defts. by Govt. witnesses,etc.	
11/14/74	Filed Govt.'s memo. of law in support of proffer of evidence of a prior similar act related to those charged in the indictment	
11/14/74	Filed Govt.'s reply memo. to deft.'s post-trial motions.	
11/14/74	Filed memo. of Jose Antonio Acosta Alvarez in support of motion to dismiss the indictment.	
11/14/74	Filed Govt 's memo. of law re: "conversion" in the context of 29 U.S.C. 501(c),etc.	
11/14/74	Filed memo. of law in behalf of deft. Robinson in support of motion to dismiss the indictment and to set aside the verdict of the jury.	
11/14/74	Filed Govt.'s memo. of law in opposition to defts' motion to dismiss the indictment.	
11/14/74	Filed affdvt. of Villegas re: preparation for trial,etc.	
11/14/74	Filed affdvt. of Richard G. Rosenbaum for deft. Alvarez in opposition to the Govt.'s attempt to introduce evidence of other similar acts.	
11/15/74	Filed deft. A. Robinson's notice of appeal from judgment of 11/7/74. Mailed copies.	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 459

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UNITED STATES OF AMERICA, :

-v- :

INDICTMENT

ALLEYNE F. ROBINSON, :
JOSE ANTONIO ACOSTA ALVAREZ, :
a/k/a JOSE ANTONIO, a/k/a :
JOSE ACOSTA and :
JOSEPH M. VILLEGAS, :

74 Cr.

Defendants. :

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The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this indictment the National Maritime Union of America, New York, New York, (hereinafter referred to as "National Maritime Union") was a labor organization engaged in an industry affecting commerce as defined in Section 402 of Title 29, United States Code.

2. From on or about January 1, 1969, to on or about March 6, 1970, defendant ALLEYNE F. ROBINSON was an officer and employee of the National Maritime Union, to wit, Patrolman.

3. From on or about June 1, 1969, to on or about January 15, 1970, defendant JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA was an officer and employee of the National Maritime Union, to wit, Master-at-Arms.

4. From on or about January 1, 1966, to in or about June, 1969, defendant JOSEPH M. VILLEGAS was an officer and employee of the National Maritime Union, to wit, Patrolman.

5. From on or about January 1, 1968, to on or about May 31, 1969, members of the National Maritime Union were divided into four classifications which were identified and numbered as Groups I, II, III and IV, respectively.

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6. From on or about June 1, 1969, to on or about March 6, 1970, members of the National Maritime Union were divided into three classifications which were identified and numbered as Groups I, II and III, respectively.

7. At all times relevant to this indictment members of the National Maritime Union received official National Maritime Group classification documents from the National Maritime Union which identified the union member and his Group classification number.

8. At all times relevant to this indictment Group I National Maritime Union members received preference in hiring for maritime work over members of Groups II, III and IV.

9. Each and every allegation of this INTRODUCTION is to be deemed repeated, realleged and incorporated by references, as though fully set forth, in each of Counts One through Eleven of this Indictment.

COUNT ONE

The Grand Jury further charges:

1. From on or about the 1st day of January, 1968, up to and including the 6th day of March, 1970, in the Southern District of New York and elsewhere, ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA and JOSEPH M. VILLEGAS, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons known and unknown to the Grand Jury to violate Title 29, United States Code, Section 501(c) and Title 18, United States Code, Section 2.

2. It was part of this conspiracy that ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, JOSE ACOSTA and JOSEPH M. VILLEGAS, the defendants, would unlawfully, wilfully and knowingly, directly and indirectly, embezzle, steal, abstract and convert to their own use,

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moneys, funds, securities, property and other assets of the National Maritime Union, to wit, National Maritime Union Group I applications and classification documents.

3. Among the means whereby the defendants would and did carry out the said conspiracy was that ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA, and JOSEPH M. VILLEGAS, the defendants, would and did receive money to falsely obtain Group I National Maritime Union classification documents for individuals who did not qualify as Group I National Maritime Union members.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. In or about May, 1969, JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA, the defendant, received approximately $750 from Juan de Dois Bachiller.

2. In or about April, 1969, JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA, the defendant, received approximately $600 from Hernan Cancela.

3. In or about June, 1969, JOSEPH M. VILLEGAS, the defendant, received approximately $750 from Israel Capote.

4. In or about June, 1969, ALLEYNE F. ROBINSON, and JOSEPH M. VILLEGAS, the defendants, met and had a conversation with Israel Capote.

5. In or about May, 1969, JOSEPH M. VILLEGAS, the defendant, received approximately $750 from John Vernon Ragsdale.

6. In or about May, 1969, ALLEYNE F. ROBINSON and JOSEPH M. VILLEGAS, the defendants, met and had a conversation with John Vernon Ragsdale.

7. In or about January, 1970, ALLEYNE F. ROBINSON, the defendant, had a conversation with Benvenido Bracero.

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8. In or about May, 1969, ALLEYNE F. ROBINSON, the defendant, received approximately $850 from Miguel Angel Rosado.

9. In or about September, 1969, ALLEYNE F. ROBINSON, the defendant, met and had a conversation with and received approximately $730 from Wilfredo Gandia.

10. In or about September, 1969, ALLEYNE F. ROBINSON, the defendant, met and had a conversation with and received approximately $700 from Weldon Clyde Oliver.

11. In or about May, 1969, ALLEYNE F. ROBINSON, the defendant, met and had a conversation with and received approximately $850 from Julian Orbe.

12. In or about September, 1969, ALLEYNE F. ROBINSON, the defendant, met and had a conversation with and received approximately $850 from Raul Quinones.

13. In or about August, 1969, ALLEYNE F. ROBINSON, the defendant, met and had a conversation with and received approximately $650 from Ernesto Roman.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH ELEVEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA, and JOSEPH M. VILLEGAS, the defendants, unlawfully, wilfully, and knowingly, directly and indirectly, did embezzle, steal, abstract and convert to their own use, moneys, funds, securities, property and other assets of the National Maritime Union to wit, National Maritime Union Group I applications and classification documents issued to individuals as hereinafter set forth:

COUNT	INDIVIDUAL	DATE	APPROXIMATE AMOUNT PAID	TO WHOM MONEY PAID
2	Juan De Dois Bachiller	Nov. 1969	$750	Jose Antonio Acosta Alvarez a/k/a Jose Antonio, a/k/a, Jose Acosta

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3	Hernan Cancela	Sept. 1969	$680	Jose Antonio Acosta Alvarez a/k/a Jose Antonio, a/k/a, Jose Acosta
4	Israel Capote	June, 1969	$750	Joseph M. Villegas
5	John Vernon Ragsdale	May, 1969	$750	Joseph M. Villegas
6	Miguel Angel Rosado	May, 1969	$850	Alleyne F. Robinson
7	Wilfredo Gandia	Sept. 1969	$730	Alleyne F. Robinson
8	Weldon Clyde Oliver	Sept. 1969	$700	Alleyne F. Robinson
9	Julian Orbe	May, 1969	$850	Alleyne F. Robinson
10	Raul Quinones	Sept. 1969	$850	Alleyne F. Robinson
11	Ernesto Roman	August, 1969	$650	Alleyne F. Robinson

(Title 29, United States Code, Sections 402 and 501(c) and Title 18, United States Code, Section 2.)

Thomas F. Lawson
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

JURY EMPANNELED TRIAL BEGUN

CTS. 11 DISMISSED TO ALL DEFTS.
CTS. 4-10 DISMISSED [illegible]
CTS. 2 & 3, 5-10 DISMISSED [illegible]

SEP 11 1974 TRIAL CONTD.
SEP 12 1974 TRIAL CONTD
SEP 13 1974 TRIAL CONTD CONTINUED [illegible]
SEP 16 1974 TRIAL CONTD BOTH SIDES RESTED. [illegible]
SEP 19 1974 TRIAL CONTD, SUMMATIONS BY COUNSEL [illegible]
CHARGE BY COURT, MARSHAL SWORN [illegible]
JURY VERDICT DEFT ROBINSON GUILTY CTS. 1-3, 4, 5, 6, 7, 8, 9
DEFT. ALVAREZ GUILTY CTS 1, 2, 3.
DEFT. VILLEGAS GUILTY CTS 1, 4, 5
JURY POLLED. PRE-SENTENCE REPORT ORDERED
NOV. 7, 1974 SET FOR SENTENCE BAIL CONTD
BENCH WARRANT

NOV 7 1974 SENTENCE ALLEGE F ROBINSON (PTY) DAN SELT
PRESENT CTS 1, 2, 3, 4, 5, 6, 7, 8, 9 [illegible]
PTY GEN. FOR [illegible]
EXECUTION OF [illegible]
PROBATION [illegible]
FINED [illegible] COURT [illegible]
DURING [illegible]
SEVERAL [illegible]

ay 18-74 B/h Vacated as to Deft
Alvarez.

Stephen J

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ALLEYNE F. ROBINSON,
JOSE ANTONIO ACOSTA ALVAREZ,
a/k/a Jose Antonio, a/k/a
Jose Acosta and
JOSEPH M. VILLEGAS,

Defendants.

INDICTMENT

74 Cr.

(18 U.S.C. §§ 371 and 2; 29 U.S.C. §§ 402 and 501(c).)

PAUL J. CURRAN
United States Attorney.

A TRUE BILL

Foreman.

FPI—85—2-19-71—20M—8950

MAY 13 1974 Deft Robinson appears (Atty L. Jackman present) Deft pleads Nq. 10 days for motions. Case assigned to Bonsal J. Deft to be R/P. Bail fixed by Court at $500 P.R.B. secured by $500 Cash Co-signed by wife, who has posted to sign bond.

Bonsal J

MAY 13 1974 Bl ordered as to Lopez along.

Bonsal J

MAY 13 1974

d Deft Villegas appears (Atty Jackman, legal aid present) Deft pleads Nq. 10 days for motions. Case assigned to Bonsal, J. Deft to be R/P. Bail fixed at $500 P.R.B. Co-signed by wife under 18 yrs.

Bonsal J.

CHARGE OF THE COURT

(Jury present.)

THE CLERK: The Court will now charge the jury. Spectators may leave at this time or remain seated until the completionof the charge.

Is the door locked, marshal?

THE MARSHAL: Yes.

THE CLERK: Fine. Thank you.

THE COURT: Madam Forelady, as you are, Miss Willis, by virtue of occupying the first chair, and ladies and gentlemen of the jury, first of all I want to thank each of you for the care and attention which you have shown throughout this trial and to tell you that I appreciate the sacrifices that I know each of you has been called upon to make in your own private lives, so that you could serve in this very important public capacity of being on a federal jury, and I'm sure you will bear with me and give me the same degree of attention you have shown throughout the trial, so that you will understand the principles of law which apply to this case.

You remember, I told you when the trial started that it was your duty as jurors to weigh the evidence calmly and dispassionately without any sympathy, without any prejudice, for or against the Government or any of these

three defendants.

I told you that everyone appearing before this bar of justice is entitled to a fair and an impartial trial regardless of his occupation or his station in life.

I told you that your verdict must be based solely on the testimony you heard from that witness chair, and on the exhibits which were received in evidence and nothing else at all.

I told you also that you and I are partners in a sense. It's my duty to instruct you as to the law which governs the case, and on that you must accept my instructions. But you ladies and gentlemen are the judges of the facts.

It's not what a lawyer may say a witness testified to, and that happened several times during the trial, where lawyers would start repeating or saying what they thought a witness said, it's not what a lawyer says a witness testified to, or what a lawyer says a document contains or shows, nor what I may say on these subjects. It's what you, the jury, remember and decide.

I also told you at the outset that during the trial I would have conversations with one or the other of the lawyers. Indeed I did. I sustained objections and I overruled them.

And I told you then and I repeat now, pay no

attention to all of that. It has no bearing on what you do. And above all, draw no inference from anything I said during this trial, that I may favor one side or the other here, for of course I do not. That is your function and not mine.

Throughout this charge I will instruct you that you may not convict any of these defendants unless and until you are satisfied that the Government has proven each element comprising the crime charged beyond a reasonable doubt.

And what do I mean by beyond a reasonable doubt? Well, the words themselves suggest the answer. It's a doubt based on reason, a doubt which a reasonable man or woman might entertain.

But a reasonable doubt is not a fanciful doubt, it's not an imagined doubt. It's not a doubt that a jury might conjure up in order to avoid performing an unpleasant task.

It's a reasonable doubt. It's a doubt which arises in a juror's mind because of something in the evidence in the case or the absence of evidence in the case. It's the kind of doubt which would cause a reasonable man or woman in a more serious and important matter in his or her life to hesitate to act, and the burden is on the Government to prove the guilt of a defendant beyond a reasonable doubt.

The Government need not prove guilt beyond all possible doubt, because after all, if that were the rule,

few people, however guilty they might be, would ever be convicted.

In this world of ours, it's practically impossible for one to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to mathematical precision or to mathematical certainty. So the law provides that the proof must prove a defendant guilty beyond a reasonable doubt, not beyond all possible doubt.

When I review the indictment with you, ladies and gentlemen, remember as I told you before, the indictment is the charge, the way by which the Government calls into court individuals who it claims have violated the law. And I told you that the indictment is not evidence of the guilt of any of these defendants, nor does it detract from the presumption of innocence with which the law surrounds each of these defendants until his guilt is proven.

And this presumption of innocence remained with each of these defendants throughout the trial, and applies to the consideration of each of the essential elements of the crimes charged, and this presumption of innocence remains unless and until you the jury are satisfied beyond a reasonable doubt of the guilt of a defendant as charged.

And each of these defendants has entered a plea of not guilty, and by doing so he has put in issue every material

element of the crimes charged, and as I have told you, the Government must prove them, as to each defendant, beyond a reasonable doubt.

And this burden has remained with the Government throughout this trial, and if the Government has not proved to you that a defendant is guilty beyond a reasonable doubt, then of course it's your duty to find that defendant not guilty.

Now, as you know, ladies and gentlemen, there are three defendants here. They are charged as three individuals, and the guilt or innocence of each of these defendants must be passed upon by you separately.

Guilt or innocence is a personal thing, and each of these defendants has the right to the same consideration on your part as if he were being tried alone.

Now, ladies and gentlemen, the evidence in this case was marshaled for you at considerable length by the lawyers earlier today. I don't intend to review it again.

It might help you some, though, if I indicate what I believe the contentions of the parties are as I understand them. But in doing this I'm doing it only in the hope that it will refresh your own recollection, because, as I have told you, it's your recollection and not mine that controls.

As I understand it, the Government contends here

that the defendants Alleyne F. Robinson, Jose Antonio Acosta Alvarez and Joseph M. Villegas, while officers and employees of the National Maritime Union of America, conspired to convert Group 1 Union documents -- I think that the Government used the word "misuse" -- well, that is all right, convert is in the statute, they mean the same thing for this purpose -- convert or misuse Group 1 documents for their personal gain, through using the Union Group 1 forms to sell Group 1 classifications to unqualified seamen, and that at various times during 1969 the defendant Robinson aided and abetted by Alvarez and Villegas (and I will tell you about aiding and abetting a little later on) did convert Union documents for personal gain, by using the forms to sell Group 1 classifications to unqualified seamen.

When I talk about conversion or misusing here, I mean that the forms were used not for the legitimate purpose of classifying Group 1 seamen under the Union's constitution and bylaws, but that they were used for the purpose of selling these classifications to unqualified seamen for their personal gain.

You will recall the testimony that the seamen in the National Maritime Union were divided into four groups, and that the seamen in Group 1 had first priority for jobs in the hiring hall. And you will also recall the testimony

that in order to qualify for Group 1, a seaman had to have a certain amount of time at sea, as I recall it, 800 days in the previous five-year period, and that he was required to pay an initiation fee of $150 as well as such dues as might have been owing at the time.

Now as I recall it, the various seamen witnesses told us that they didn't have enough days to qualify for Group 1, but that by paying amounts of money in excess of the initiation fee and dues they did receive Group 1 classifications.

The defendants, of course, deny all of these contentions. Each of the defendants denies here that there was a conspiracy to convert Union documents for personal gain, or if there was such a conspiracy, that they were members of it. And each of the defendants also denies that he ever converted or aided and abetted anyone else in converting Union documents for personal gain.

Then defendant Robinson, as I recall it, contends that he couldn't sell Group 1 classifications to unqualified seamen because these applications had to be processed for verification of the applicant's time at sea either in the Union's record office, in the case of commercial ships, or by the Industrial Relations Office in Brooklyn, in the case of MSTS ships, before Group 1 classifications could be issued.

Now, turning to the statute that is involved in this case, ladies and gentlemen, it's Section 501 of the Labor Management Reporting and Disclosure Act of 1959 which is an act of Congress.

To the extent that it's relevant in this case, Section 501-A provides that the officers, agents and other representatives of a labor organization (and the National Maritime Union, of course, is a labor organization) occupy positions of trust in relation to such organization and its members as a group.

It is therefore the duty of each such person to hold the labor organization's money and property solely for the benefit of the organization and its members and to refrain from holding or acquiring any pecuniary (that means money) or personal interest which conflicts with the interests of such organization. (Here the National Maritime Union.)

Then Section 501-C of this same statute provides, to the extent here relevant, that any person who converts to his own use (and I told you about converting a minute ago) any of the property of a labor organization (property here, of course, are these Union forms) of which he is an officer or by which he is employed, directly or indirectly, is guilty of a crime.

Well that is the crime that the Government is

charging here.

Because the Government charges that the defendants converted to their own use these Group 1 applications and classification documents by using them to sell these Group 1 classifications to unqualified seamen.

So much for the statute, ladies and gentlemen.

Turning to the indictment, I remind you again, the indictment is only the charges, it's not evidence. The indictment charges that each of these defendants conspired to violate the statute which I have just reviewed with you, and then it charges that at various times during 1969 the defendants or some of them did violate the statute.

There are ten counts in the indictment. The first count is the conspiracy count. And I will so refer to it.

Counts 2 through 10 are substantive counts which charge the defendants with substantive violations or conversion of the documents.

And of course, you must consider each of these counts separately, and your verdict on one count does not affect your verdict on any other count.

And with respect to each count, of course, you must consider each defendant named in that count separately, and return a separate verdict as to each of the defendants who is named.

Turning first to Count 1, which I call the conspiracy count, another provision of law, Title 18, Section 371 of the United States Code, provides that if two or more persons conspire to commit an offense against the United States, and a conspiracy to violate the statute I read to you would be a conspiracy to commit an offense against the United States, and any one or more of such persons does any act to further the objects of the conspiracy each member of the conspiracy is guilty under Section 371.

So you see from this, ladies and gentlemen, that a conspiracy to violate the statute which I read you is a crime separate and apart from the substantive crimes which the conspiracy was organized to commit.

In other words, the conspiracy, itself, constitutes a crime. And then if the members of the conspiracy violate the statute, these violations are separate crimes, and that is the way this indictment is drawn.

So turning again to the indictment, Count 1, the conspiracy count -- and I will send you in a copy of this indictment, Madam Forelady, so you will have it in the jury room for your consideration and when you reach your verdict -- the indictment starts with an introduction.

I am going to read it to you, but I don't think there is really much dispute about this introduction as I

recall at trial. The introduction reads:

At all times relevant to this indictment, the National Maritime Union of America, New York, New York, (hereinafter referred to as National Maritime Union) was a labor organization engaged in an industry affecting commerce -- no question about that.

2. From on or about January 1, 1969 to on or about March 6, 1970, defendant Alleyne F. Robinson was an officer and employee of the National Maritime Union, to wit, a patrolman. I think he told us he was.

3. From on or about June 1, 1969 to on or about January 15, 1970, defendant Jose Antonio Acosta Alvarez, also known as Jose Antonio, was an officer and employee of the National Maritime Union, to wit, Master-at-Arms. I think he so told us.

4. From on or about January 1, 1966 to in or about June 1969, defendant Joseph M. Villegas was an officer and employee of the National Maritime Union, to wit, a patrolman. I don't recall any dispute on that, either.

5. From on or about January 1, 1968 to on or about May 31, 1969, members of the National Maritime Union were divided into four classifications which were identified and numbered as Groups 1, 2, 3 and 4 respectively.

I recall Mr. Zuckerman in his summation went into

this in some detail, so I don't think there is really any problem there.

6. From on or about June 1, 1969 to on or about March 6, 1970, members of the National Maritime Union were divided into three classifications which were identified and numbered as Groups 1, 2 and 3 respectively.

7. At all times relevant to this indictment, members of the National Maritime Union received official National Maritime group classification documents from the National Maritime Union which identified the Union member and his group classification number.

Well I think there is plenty of evidence that they did on that.

8. At all times relevant to this indictment, Group 1 National Maritime Union members received preference in hiring for maritime work over members of Groups 2, 3 and 4. Again, I think there is no dispute about that.

And then 9 is just one of these legalistic things that lawyers love: Each and every allegation of this introduction is to be deemed repeated, realleged and incorporated by reference as though fully set forth in each of Counts 1 through 10 of this indictment. So apply it to all of the counts of the indictment.

Now we get to the conspiracy count, Count 1.

The grand jury charges:

1. From on or about the 1st day of January, 1968 up to and including the 6th day of March, 1970 -- there is nothing magic about these dates. As I recall it, the first testimony we had was around November 1968 not January. It seems to me it started in the fall rather than the first of the year, but that is immaterial.

In the Southern District of New York -- and you will see Southern District of New York all over this indictment, and I think all I need to say to you is that the Union hall where all these things were supposed to have taken place up on 13th Street or wherever that is, is in the Southern District of New York. I don't think you need to bother much more about it.

Alleyne F. Robinson, Jose Antonio Acosta Alvarez and Joseph M. Villegas, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons known and unknown to the grand jury to violate this statute I read to you. I'm not going to read the title again, but it's that statute.

2. It was part of this conspiracy that Robinson, Alvarez and Villegas, the defendants, would unlawfully, willfully and knowingly, directly and indirectly, embezzle,

steal, abstract and convert to their own use monies, funds, securities, property and other assets of the National Maritime Union, to wit, National Maritime Union Group 1 applications and classification documents.

I think you can disregard most of the words there, except converting the documents, which I have reviewed with you.

3. Among the means whereby the defendants would and did carry out the said conspiracy was that Robinson, Alvarez and Villegas, the defendants, would and did receive money to falsely obtain Group 1 National Maritime Union classification documents for individuals who did not qualify as Group 1 National Maritime Union members.

In deliberating on this Count 1, the conspiracy count, ladies and gentlemen, you must consider three elements, and the Government must prove each of these elements beyond a reasonable doubt.

First, that there was a conspiracy here to convert these documents for personal gain by selling these classifications to unqualified seamen; first that there was a conspiracy, and second, that the defendant you are considering -- and you will consider them separately, of course -- unlawfully, willfully and knowingly became a member of that conspiracy, knowing that the purpose of the conspiracy was to se

these Group 1 classifications to unqualified seamen. And third, th at least one of the overt acts set forth in the indictment, and I will read them to you in a minute, was committed by one of the members of the conspiracy, not necessarily the defendant you are considering, but by one of the members of the conspiracy, and that it was committed in furtherance of the conspiracy.

So going back to the first element, ladies and gentlemen, was there a conspiracy here? Well, what is a conspiracy? A conspiracy is merely a partnership in crime. It's a combination of two or more people to violate the law in some way. And of course here it is contended that the partnership in crime was to convert or misuse these Group 1 books, to sell this Group 1 status to these unqualified seamen.

Of course, the Government doesn't have to prove that there was any formal agreement or contract between the members of the conspiracy, setting forth its object. People who enter into criminal conspiracies are not likely to put their agreements in writing.

But on the other hand, to find a conspiracy here, you must find that the members came to some kind of an understanding for the purpose of accomplishing an unlawful purpose, which I have reviewed with you.

So, first, ladies and gentlemen, consider whether the Government has proved beyond a reasonable doubt that there was such a conspiracy. And then you reach the next element: Was the defendant you are considering, if you found such a conspiracy, was the defendant you are considering a member of that conspiracy?

You may not find the defendant a member of the conspiracy merely because he may have known others whom you think were members of the conspiracy, or that he may have known that some of these other people were conspiring to convert these documents, to sell these Group 1 classifications.

You may not find him a member of the conspiracy because he may have been present when others were doing it.

You may not find the defendant you are considering to have been a member of the conspiracy unless you find that he knowingly and willfully joined it, joined the unlawful scheme, and knowing what its purpose was.

So if you find there was a conspiracy here, then on the second element ask yourselves: Did the defendant you are considering knowingly and willfully join that conspiracy, knowing the purposes of the conspiracy?

And here consider the evidence as to that defendant's own acts, his own statements, his own conduct, and consider the evidence as to the acts and statements of others

which you, the jury, feel bear on the issue of whether the defendant you are considering was a member of the conspiracy.

Now the guilt of a member of a conspiracy is not measured by the extent or duration of his participation or whether his role was a major one or whether it was a minor one. He is equally guilty if you find he did in fact participate in the conspiracy.

But I remind you again, he must have known that the purpose of the conspiracy here was to convert these Group 1 documents for personal gain by selling Group 1 classifications to unqualified seamen.

Applying these standards, ladies and gentlemen, if you find that the Government has not proved beyond a reasonable doubt that there was a conspiracy, the first element, or if they have proved that, they have not proved beyond a reasonable doubt that the defendant you are considering was a member of it, then of course you must find the defendant you are considering not guilty on the first count.

But on the other hand, if you find that there was a conspiracy and if you find that the Government has proved beyond a reasonable doubt that the defendant you are considering knowingly and willfully joined that conspiracy, then you reach the third element which the Government must prove beyond a reasonable doubt, and that is whether one of the

members of the conspiracy, not necessarily the defendant you are considering, committed at least one of the overt acts charged in the indictment in furtherance of the conspiracy.

Now, the indictment lists I believe 12 overt acts, and again it mentions Sourthern District of New York. You don't need to worry about that, because these things were all in the Southern District of New York.

The first one is: 1. In or about May 1969, Jose Antonio Acosta Alvarez, the defendant, received approximately $750 from Juan de Dois Bachiller. He testified at trial, and you can remember and judge that testimony.

2. In or about April 1969, Jose Antonio Acosta Alvarez, the defendant, received approximately $680 from Hernan Cancela. Well, Cancela also testified.

3. In or about June 1969 Joseph M. Villegas, the defendant, received approximately $750 from Israel Capote. Capote testified, too.

All these people testified. I don't think I need to repeat that.

4. In or about June 1969, Alleyne F. Robinson and Joseph M. Villegas, the defendants, met and had a conversation with Israel Capote.

5. In or about May 1969, Joseph M. Villegas, the defendant, received approximately $750 from John Vernon

Ragsdale.

6. In or about May 1969, Alleyne F. Robinson and Joseph M. Villegas, the defendants, met and had a conversation with John Vernon Ragsdale.

7. In or about January 1970, Alleyne F. Robinson, the defendant, had a conversation with Bienvenido Bracero. As I recall, Bracero testified on rebuttal. He was the last witness.

8. In or about May 1969, Alleyne F. Robinson, the defendant, received approximately $850 from Miguel Angel Rosado.

9. In or about September 1969, Alleyne F. Robinson, the defendant, met and had a conversation with and received approximately $730 from Wilfredo Gandia.

10. In or about September 1969, Alleyne F. Robinson, the defendant, met, and had a conversation with and received approximately $700 from Weldon Clyde Oliver.

11. In or about May 1969, Alleyne F. Robinson, the defendant, met and had a conversation with and received approximately $850 from Julian Orbe, O-r-b-e.

And finally, 12. In or about September 1969, Alleyne F. Robinson, the defendant, met and had a conversation with and received approximately $850 from Raul Quinones.

So with regard to these overt acts, ladies and

gentlemen, they need not be crimes in themselves, but you must consider each of the overt acts and find whether in fact they happened. And if they did happen, whether they were in furtherance of the conspiracy.

The Government need not prove that all of these acts did actually happen or that they were all committed in furtherance of the conspiracy. It's sufficient if the Government has proved to you beyond a reasonable doubt that at least one of these 12 acts that I just read to you was committed in furtherance of the conspiracy as I have described that conspiracy to you.

So summarizing the conspiracy count, ladies and gentlemen, the Government must prove beyond a reasonable doubt, first, that there was a conspiracy; second, that the defendant you are considering was a member of it, that he knowingly and willfully joined it, knowing its purpose; and third, that at least one of these overt acts was committed, not necessarily by the defendant you are considering, but by a member of the conspiracy, and that it was committed in furtherance of the conspiracy.

All right, ladies and gentlemen, so much for the conspiracy count.

Now as I mentioned to you, there are Counts 2 through 10 which are substantive counts. I will take up

Counts 2 and 3 first and read them to you.

Counts 2 and 3: The grand jury further charges that on or about the dates hereinafter set forth in the Southern District of New York, Alleyne F. Robinson and Jose Antonio Acosta Alvarez, the defendants, unlawfully, willfully and knowingly, directly and indirectly, did embezzle -- all these words again -- just remember convert -- property and assets of the National Maritime Union, to wit, National Maritime Union Group 1 applications and classification documents issued to individuals as hereinafter set forth.

And Count 2, the individual is Juan de Dois Bachiller, date November 1969, approximate amount paid $750, to whom the money was paid, Jose Antonio Acosta Alvarez.

And Count 3, the individual named is Hernan Cancela, the date is September 1969, the payment is $680, and it's charged it was paid to Jose Antonio Acosta Alvarez.

And here, with respect to Counts 2 and 3, ladies and gentlemen, you will recall that Bachiller and Cancela testified that they paid money to Alvarez who took them to defendant Robinson's office where they saw Robinson and signed Group 1 application forms. Both men testified, as I recall it, that they eventually received their classifications, even though they did not have the required sea time.

The defendant Alvarez denies that he ever received

any money from Bachiller or Cancela for the purpose of getting these Group 1 classifications, and defendant Robinson also denies that he sold any Group 1 classifications to Bachiller and Cancela.

Then going to Counts 4 and 5 -- and all these counts are substantially the same, you will see that, ladies and gentlemen -- I will treat them rather briefly -- Counts 4 and 5, the grand jury further charges that on or about the dates hereinafter set forth, in the Southern District of New York, Alleyne F. Robinson and Joseph M. Villegas -- this is Villegas this time, not Alvarez, Villegas -- the defendants unlawfully, willfully and knowingly and so forth, convert National Maritime Union Group 1 applications.

Count 4, the individual named is Israel Capote, date June 1969, amount of payment $750, to whom paid, Villegas.

Count 5, John Vernon Ragsdale, date May '69, amount $750, to whom paid, Villegas.

Here you will recall the testimony of Capote and Ragsdale, as I recall it they came to New York from Seattle, tried to get Group 1 classifications, even though they didn't have the sea time that was necessary, and they testified that they paid money to Villegas who took them to Robinson's office and they saw Robinson and signed the application forms, and

they both testified that they eventually received Group 1 classifications.

Now here the defendant Villegas denies that he ever received any money from Capote or Ragsdale, and defendant Robinson denies that he ever sold Group 1 classifications to them.

So then we get to Counts 6 through 10: The grand jury further charges on or about the dates hereinafter set forth in the Southern District of New York, Alleyne F. Robinson, the defendant, unlawfully did all these things which is the same as in the other count.

Count 6, the individual is Miguel Angel Rosado, date May 1969, amount paid $850, to whom paid, Alleyne Robinson.

These are all Robinson on Counts 6 through 10.

Count 7, Wilfredo Gandia, date September 1969, amount 730, to Robinson.

8. Weldon Clyde Oliver, September 1969, $700 to Robinson.

9. Julian Orbe, date May 1969, $850 to Robinson.

10. Raul Quinones, September 1969, $850 to Robinson.

Now you will recall the testimony of Rosado, Gandia, Oliver, Orbe and Quinones, who testified that they did pay

money to Robinson and that Robinson had them sign Group 1 application forms.

But here again the defendant Robinson denies that he ever sold Group 1 applications to any of these individuals.

Now the elements on Counts 2 to 10 are the same for each count. You will consider them separately but apply the same elements, and with respect to each of them, the Government must prove beyond a reasonable doubt, first, that somewhere around the date stated in the count you are considering the defendant you are considering was an officer or employee of the National Maritime Union of America.

I don't think there is any dispute about that at all. I think they were.

Second, that at or about the date stated in the count you are considering, the defendant you are considering did convert or aid and abet -- and I will tell you something about that in a minute -- Robinson in converting these Group 1 documents for personal gain by using Group 1 forms to sell Group 1 classifications to unqualified seamen.

So that really is the element which the Government must prove beyond a reasonable doubt; that the defendant you are considering did convert or aid and abet Robinson in converting the documents.

And here again, I remind you that by convert I mean

that the forms were not used for the legitimate purposes of classifying Group 1 seamen, but for the purpose of selling Group 1 classifications to unqualified seamen for personal gain.

And then the third element on each of these substantive counts which the Government must prove beyond a reasonable doubt is that the defendant you are considering in each instance was acting unlawfully, willfully and knowingly.

Now a few words about aiding and abetting. In Counts 2 through 5, as I understand it, the Government is contending that the defendants Alvarez and Villegas aided and abetted Robinson by collecting the money in connection with the books that were going to be issued by Robinson.

So with respect to aiding and abetting, there is another federal statute, Title 18, Section 2-A which you must consider, which provides that whoever commits an offense against the U.S. or aids, abets, counsels, induces or procures its commission is punishable as a principal.

All that means is that if you help somebody else commit a crime, you are also guilty of that crime.

But before you can find the defendant you are considering, whether it's Alvarez or whether it's Villegas, guilty of aiding and abetting here, you must find that the

Government has proved beyond a reasonable doubt that Alvarez or Villegas, whichever one you are considering, knew that the money he received was part of a venture to convert these Union documents, to sell these documents to seamen who were not entitled to them.

Now here again, it isn't sufficient that the defendant you are considering knew that Robinson or anyone else was selling documents or that he may have acquiesced in what Robinson or anyone else might be doing in this connection. To find the defendant guilty of aiding and abetting, you must find that he knowingly and willfully participated in the venture, knowing of its unlawful purpose, that he sought in some way to make the venture his own.

You will recognize from what I have said to you, ladies and gentlemen, that one essential element -- and I reviewed them in both the conspiracy and the substantive counts -- is the knowledge and intention of the defendant you are considering; did he have the criminal intent.

Remember, in connection with the conspiracy charge, I told you you must find that the defendant you are considering unlawfully, knowingly and willfully joined the conspiracy, and with respect to each of the substantive counts, that the defendant acted unlawfully, willfully and knowingly.

Well how do you determine this? Well, an act is

done knowingly and willfully, of course, if it's done voluntarily and purposefully. An act is done willfully, knowingly and unlawfully if it's done with an evil motive or purpose, such as to violate the law.

But an act is not done willfully, knowingly or unlawfully if it's done by mistake, carelessness or other innocent reason.

And of course you can't look into the minds of these defendants to know what their intentions were on these occasions or to determine what knowledge he had at the time. These are matters which you, the jury, must determine from carefully considering the facts and circumstances.

The knowledge and intentions of a defendant may only be understood when put into context of the circumstances surrounding his acts and the inferences which you, the jury, find may be reasonably drawn from them.

You might ask yourself whether these transactions were normal or abnormal, whether they were open or surreptitious, whether you think the background of the defendant made it likely or unlikely that he understood what he was doing, whether he had a motive, whether he had a financial or other interest in the outcome.

These are the kinds of questions, ladies and gentlemen, you should ask yourself, and of course they're

not the only ones, nor do I suggest any answers to any of these questions.

In your own daily lives, you are continually called upon to use your common sense and experience to determine from the actions or statements of others what their real intentions and purposes are, and please do the same thing here in determining the knowledge and intentions of these defendants.

Now, as I recall it, one of the Government witnesses, Oliver, testified that the defendant Robinson told him to tell the FBI that he only paid the $150 initiation fee when, according to Oliver, he had paid the defendant Robinson $700.

If you find that Robinson did make this statement to Oliver for the purpose of misleading the FBI, then you may consider the statement as circumstantial evidence of a guilty consciousness on the part of Robinson, having independent probative force on the question of Robinson's knowledge and intentions, his criminal intent, if you will.

But please do not consider Oliver's testimony in any way with respect to either the defendant Alvarez or the defendant Villegas.

In considering the evidence which you have heard, ladies and gentlemen, bear in mind that the law recognizes two types of evidence, direct evidence and circumstantial

evidence.

Direct evidence is testimony of a witness who testifies as to what he did or what he saw.

Circumstantial evidence consists of circumstances from which the jury may infer by a process of reasoning certain facts which are sought to be established as true.

The classic example of circumstantial evidence is, if you go home one day, and you walk in, and somebody is there looking at television, and your coat is all wet, they look at you and say it's raining outside.

Well they didn't look out to see if it was raining, they look at you and see your coat's all wet, and by a process of reasoning they conclude that it's raining outside.

Well that is circumstantial evidence, and of course there is circumstantial evidence in this case. And both direct evidence and circumstantial evidence are good evidence and no greater degree of certainty is required, whether it's circumstantial or direct.

But in any event, as I have told you before, the evidence must convince you beyond a reasonable doubt of the guilt of the defendant you are considering. And it's for you, the jury, alone to decide what inferences you will draw from the evidence and what facts you find to have been proven by it.

Now, there was a point made, I think, in some of the summations this morning, about one Mrs. E. U. Maynard, I think that was talked about, why didn't she appear at the trial, and I think the point was also made as to why Mr. Nesbitt, who as I understand was an officer of the Union, why he didn't testify.

Well, as far as I can see, as far as the record here is concerned, I think that these witnesses could have been called by either side. They could have been called by the Government, they could have been called by the defendants.

And if you find that a potential witness was available to both sides, both to the Government and to the defendants, and both sides failed to call him or her as a witness, you may draw the inference that the testimony of the absent witness might have been unfavorable to either the Government or to the defendants or to both of them, for that matter.

But it's equally within your discretion to draw no inference at all from the failure of either side to call these witnesses.

Now, one of the really difficult issues you have in this case, ladies and gentlemen, is the credibility of the witnesses.

There isn't any doubt, as I heard the evidence,

somebody's lying to you, and I don't know who it is. That is your job, not mine. Somebody is lying to you. And of course you, the jury, are the sole judges of the credibility of these witnesses.

And of course, you subject the testimony of all these witnesses to the same standard, whether they were called by the Government or by the defendant, and it isn't the number of witnesses that is important, or the quantity of the testimony, it's the quality of the testimony; the testimony you ladies and gentlemen think represent the true picture of what happened.

And you may wonder, how do you determine the credibility of these witnesses or the weight to be given to their testimony? How do you determine whether they are credible?

Well of course here again, just use your plain, everyday common sense. You saw them on the witness stand. How did they impress you? Did you think they were testifying frankly, candidly and fairly?

So apply your common sense and experience just as you do in determining an important matter in your own life, when you have to decide whether you have been given a true picture of a given situation.

I think you consider a witness' demeanor, you take

into account his age, his background, his occupation, his prior criminal record, if any; you consider his candor or lack of candor; you consider a witness' possible bias, the accuracy of his recollection, and you consider whether you find his testimony supported or whether you find it to be contradicted by other credible testimony and circumstances.

Now, in this trial, two of the defendants took the stand. Mr. Robinson took the stand, you remember, and Mr. Alvarez took the stand, and they testified.

They testified voluntarily. They didn't have to take the stand. But they testified voluntarily. And manifestly each of them has a vital interest in the outcome, in your verdict, and certainly their interest is one of the matters which you should consider in determining the credibility of their testimony. And that testimony should be considered by you with great care.

But of course this doesn't mean that a defendant isn't telling the complete truth, because of his interest in the outcome. It's a factor, though, the jury should consider.

And then you will recall in this connection that the Government, again in rebuttal, called Mr. Bracero, and you remember Mr. Bracero testified he had paid money to Robinson for a Group 1 classification, and this testimony was offered on rebuttal after Mr. Robinson had taken the

stand, remember, and denied he received money from anyone.

So you will consider Bracero's testimony in this connection only in considering the credibility which you give to Mr. Robinson's testimony. And you will not consider Bracero's testimony -- and there was some feature about some threats as I remember it, Bracero testified to, you won't consider that at all with respect to the defendants Alvarez and Villegas, and you will not draw any inferences unfavorable to either Alvarez or Villegas by reason of Bracero's testimony.

It was brought out during the trial by a number of the Government witnesses, if not all of them, that they knew they weren't entitled to Group 1 books; they didn't have the sea time.

So that in effect these witnesses, and I think this was brought out at trial, knew they were doing something they shouldn't do, they might have been engaged in some kind of a criminal activity, in trying to gyp the fellow members of the Union by getting Group 1 books ahead of them when they weren't entitled to them.

So you must consider that also in considering the credibility of these Government witnesses.

Of course, their testimony is sufficient to convict the defendants, if you believe it, and if their testimony

convinces you of the defendants' guilt beyond a reasonable doubt.

But bear in mind that their testimony, because of this factor, should be subjected by you to careful study and scrutiny.

A witness may be discredited or impeached by contradictory evidence, and if you believe that a witness has been impeached or discredited, you can give that testimony such credibility as you think it deserves.

If you find a witness testified falsely to you, you can reject all his testimony; you can accept part of it if you find it reliable and you can reject the rest.

Now, the third defendant, Mr. Villegas, did not take the stand, and I said to you a minute ago that the other defendants didn't have to take the stand either.

And the fact that Mr. Villegas didn't take the stand must not be considered by you as any evidence against him, and you must draw no inference unfavorable to him by that fact.

Please don't let that weigh in your deliberations at all. And this is because, as I told you at the outset, the burden is on the Government to prove the guilt of a defendant beyond a reasonable doubt. A defendant is not required to prove his innocence.

I remind you again, ladies and gentlemen, please consider each of the defendants separately, each count separately, each defendant in a count separately, and of course, your verdict with respect to a defendant on one count, whether it's guilty or not guilty, doesn't control your verdict on another count with respect to that defendant.

During your deliberations, if you want to see any of the exhibits which have been introduced in evidence, all of them if you want to, just let me know by telling the marshal, and it will be sent in to you.

As you deliberate, ladies and gentlemen, do listen to the opinions of your fellow jurors as well as to seek an opportunity to express your own view.

Jury deliberation is one in which everybody expresses their views, exchanges views, and don't be afraid to change your first view because of pride of opinion or stubbornness or any other reason should you become convinced that your first view was wrong.

But on the other hand, ladies and gentlemen, never surrender your honest convictions about the case; never surrender that for any reason, including whether you are outnumbered or for any other reason at all; you must not surrender your honest conviction.

And you will arrive at a verdict here provided you

can do this consistently with the conscientious convictions of each and every one of you.

Of course, it's important to both the Government and each of these defendants that this case be decided by you, but your verdict here must be a unanimous verdict. It is a verdict reflecting the conscientious convictions of each and every one of you.

Now should you, after considering the evidence here, ladies and gentlemen, find that a defendant is not guilty, don't hesitate for any reason to render a verdict of not guilty.

But on the other hand, if you find that the law has been violated by a defendant as charged here, you must not hesitate to render a verdict of guilty because of sympathy or any other reason at all.

And please don't consider the question of possible punishment of any of these defendants, if you find them guilty. Don't let this enter into your deliberations in any way.

The duty of imposing sentence rests on the Court, and you mustn't allow a consideration of punishment affect you or make you seek to avoid the performance of an unpleasant task.

And finally, ladies and gentlemen, I am sure that

if you listen to the views of your fellow jurors and if you apply your common sense, you are going to reach a fair verdict in this case, and remember, that your verdict must be rendered without fear, without favor, without prejudice, and without sympathy.

Will counsel come forward a minute, please.

(At the side bar.)

THE COURT: I will start with Mr. Rosenbaum.

MR. ROSENBAUM: Nothing further, your Honor.

MR. ZUCKERMAN: Nothing.

MR. CURLEY: I have a request that when the indictment be sent in, your Honor, you remind the jury that it's not an exhibit, it's not in evidence, and it's merely a guide, because of all that introductory matter.

THE COURT: All right.

MR. CURLEY: I wish to make one brief objection in reference to the Court's charge on the availability of Mrs. Maynard.

The Court made a finding that she was equally available to both sides. I previously noted that --

THE COURT: So far as I knew. I didn't say she was. As far as anything came up at the trial, she was equally available. I have no reason why she wasn't.

MR. CURLEY: There is a clear conflict between my

client and Mr. Robinson, Mr. Zuckerman's client, and again, we are placed in part of a team, one side or the other, when we are really not a part of any side.

THE COURT: You have made your objection on that. I will give you an exception on it.

MR. CURLEY: Thank you.

THE COURT: How about the Government?

MR. KINGHAM: Nothing for the Government.

MR. ZUCKERMAN: May I make the same objection.

THE COURT: Yes. If you don't ask for anything else, I will give it to you, too.

MR. ZUCKERMAN: Thank you.

(In open court.)

THE COURT: Mrs. Ward and Mrs. Wolfson, you have reached the end of the trail here, and all your fellow jurors have arrived and are bushy-tailed and ready to go, so that it is my pleasure now to excuse you and to thank you very much for being with us during these days.

And don't think that you didn't do any good. You can imagine what would happen if any of these other ladies and gentlemen had not appeared, and some were a little late, we would be in terrible shape today. I want to thank you and I want to wish you a lot of luck in your future.

What are their instructions?

THE CLERK: They will report back, your Honor, to the central jury part on the first floor.

THE COURT: All right. Good luck to you anyway.

(Alternate jurors were excused.)

(Two marshals were duly sworn.)

THE COURT: Mr. Wallace, will you mark this indictment, copy of the indictment, as a Court exhibit and give it to Miss Willis.

And I remind you again, ladies and gentlemen, that indictment is not in evidence, and also it is a charge, merely the charge, and it is not evidence, and I'm giving it to you, as I indicated, as a guide so you can follow these various counts and to help you in reaching your verdict.

xxx (Court Exhibit 1 marked.)

THE COURT: Remember also, there are ten counts here, one conspiracy, nine substantive, and your verdict will be guilty or not guilty on each count as to each of the defendants named in that count.

All right, thank you very much. You may retire.

xxx (Court Exhibit 2 marked.)

(At 1 p.m., the jury retired to deliberate upon a verdict.)

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- :

ALLEYNE F. ROBINSON, :
JOSE ANTONIO ACOSTA ALVAREZ,
a/k/a JOSE ANTONIO, a/k/a :
JOSE ACOSTA and
JOSEPH M. VILLEGAS, :

Defendants. :

- x

#41121

74 Cr. 459

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York
Attorney for the United States of America
V. THOMAS FRYMAN, JR.,
Assistant United States Attorney
Of Counsel

SAMUEL M. ZUCKERMAN
Attorney for Defendant Robinson

SCHECHTER & ROSENBAUM
Attorneys for Defendant Alvarez
RICHARD G. ROSENBAUM
Of Counsel

FEDERAL DEFENDER SERVICES UNIT
THE LEGAL AID SOCIETY
Attorneys for Defendant Villegas
JOHN P. CURLEY
Of Counsel

MEMORANDUM

BONSAL, D.J.

Defendant Villegas has moved pursuant to Rules 6(e), 12, 14, 41(f),

and 48(b) of the Federal Rules of Criminal Procedure to dismiss the indictment on the grounds of (1) pre-indictment delay and (2) that he was required to testify before a Grand Jury without being advised of his Fifth Amendment rights. The motion filed June 6, 1974 requests the Court to "await further data in support of these motions." No further data has been supplied and the trial has long since been scheduled for September 10, 1974. By letters from their attorneys, defendants Alvarez and Robinson join in defendant Villegas' motion.

Since the indictment was filed within the period of the statute of limitations, and there is no showing of prejudice to the defendants, the motions to dismiss for ~~[illegible]~~ preindictment delay are denied. United States v. Capaldo, 402 F.2d 821, 823 (2d Cir. 1968), cert. denied, 394 U.S. 989 (1969); United States v. Feinberg, 383 F.2d 60,64-67 (2d Cir. 1967).

The Government concedes that defendant Villegas testified on December 15, 1971 before the September 22, 1970 Additional Grand Jury without having been advised of his Fifth Amendment rights, and was at the time a potential defendant. The term of this Grand Jury expired on March 15, 1972 wihhout its returning an indictment relating to the investigation involved in Villegas' testimony.

The present indictment was handed up by the Regular April, 1974 Grand Jury. According to the affidavit of Assistant United States Attorney Bart Schwartz dated June 28, 1974 and served by mail on the defendants on that same date, none of the three defendants testified

before the April, 1974 Grand Jury, and none of the presentation before the April, 1974 Grand Jury was in any way derived from Villegas' prior Grand Jury testimony. Accordingly to Mr. Schwartz's affidavit, defendants Alvarez and Robinson also testified before the earlier Grand Jury, but were advised of their Fifth Amendment rights prior to testifying. No further evidence has been presented, and there is no basis for dismissing the indictment on this score. See United States v. James, 493 F.2d 323, 326 (2d Cir. 1974).

The defendants' motions are in all respects denied.

It is so ordered.

Dated: New York, N.Y.
August 28, 1974

Robert J. Ward
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA

-v-

ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA ALVAREZ a/k/a JOSE ANTONIO a/k/a JOSE ACOSTA and JOSEPH M. VILLEGAS,

Defendants.

- x

74 Cr. 459

#41405

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York
Attorney for the United States of America
T. BARRY KINGHAM,
Assistant United States Attorney
Of Counsel

SAMUEL M. ZUCKERMAN
570 Seventh Ave., New York, N.Y. 10018
Attorney for Defendant Robinson

SCHECHTER & ROSENBAUM
225 Broadway, New York, N.Y. 10007
Attorneys for Defendant Alvarez
RICHARD G. ROSENBAUM
Of Counsel

FEDERAL DEFENDER SERVICES UNIT,
THE LEGAL AID SOCIETY
Attorneys for Defendant Villegas
JOHN P. CURLEY
Of Counsel

MEMORANDUM

BONSAL, D. J.

By jury verdict rendered on September 19, 1974 defendants

Alleyne Robinson, Jose Antonio Acosta Alvarez, and Joseph Villegas were found guilty of conspiring to violate and of violating or aiding and abetting the violation of section 501(c) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §501(c). Each of the defendants now moves to set aside the verdict and to dismiss the indictment on the ground that the facts adduced at trial cannot constitute a violation of section 501(c). In addition, defendant Villegas moves for a new trial.

Defendants Robinson, Alvarez and Villegas were officers and employees of the National Maritime Union of America ("National Maritime Union"). Seamen in the National Maritime Union were divided into four groups, with seamen in Group I having first priority on jobs. In order to qualify for Group I, a seaman had to have 800 days at sea in the previous five-year period and was required to pay an initiation fee of $150 and any dues which might be owing at the time.

One of defendant Robinson's duties was to assist seamen in applying for Group I classifications. To perform this function, Robinson had in his possession union Group I application forms. After the forms were filled out, he would on occasion take them to the office of the Military Sea Transportation Service in Brooklyn to have them verified.

The evidence introduced at trial was sufficient to es-

tablish that in return for payments in excess of those authorized by the union, Robinson would obtain Group I classifications for seamen who did not have enough time at sea to qualify, by entering false information on the Group I application forms, and then having them falsely verified. The evidence was also sufficient to establish that Alvarez and Villegas knowingly referred seamen to Robinson for the purpose of obtaining false Group I classifications and also collected from the seamen unauthorized payments for Robinson.

Section 501(c) of the Labor-Management Reporting and Disclosure Act of 1959 provides in relevant part:

> "Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use ... any of the ... property ... of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both."

The Government proceeded at trial on the theory that the defendants conspired to convert and that Robinson, aided and abetted by Alvarez and Villegas, did convert union Group I application forms for personal gain by using the forms to sell Group I classifications to unqualified seamen. Defendants contend, however, that the facts adduced at trial fail to constitute a violation of section 501(c) because nothing was taken from the union and the Group I application forms had no value.

One of the purposes of the Labor-Management Reporting and Disclosure Act of 1959 is to preserve "the highest standards of responsibility and ethical conduct." 29 U.S.C. §401(a); United States v. Silverman, 430 F.2d 106, 114 (2d Cir. 1970), cert. denied, 402 U.S. 953 (1971), rehearing denied, 403 U.S. 924 (1971). To this end, Congress in section 501 defined "in the broadest terms possible the duty which the new federal law imposes upon a union official." United States v. Silverman, supra, at 113 citing Highway Truck Drivers and Helpers Local 107 v. Cohen, 182 F.Supp. 608, 617 (E.D. Pa.), aff'd per curiam, 284 F.2d 162 (3d Cir. 1960), cert. denied, 365 U.S. 833 (1961).

As pointed out by the defendants, the most frequent violations of section 501(c) have involved union funds. However, in drafting section 501(c), Congress did not invent new language. See United States v. Silverman, supra, at 126. Applicable to section 501(c), therefore, is the Supreme Court's analysis in Morissette v. United States, 342 U.S. 246, 271 (1952) of another provision of federal law employing similar language:

> "It is not surprising if there is considerable overlapping in the embezzlement, stealing, purloining and knowing conversion grouped in this statute. What has concerned codifiers of the larceny-type offense is that gaps or crevices have separated particular crimes of this general class and guilty men have escaped through the breaches. The books contain a surfeit of cases drawing fine distinctions between slightly different circumstances under which one may obtain wrongful advantages from another's property. The codifiers wanted to reach all such instances."

The Court went on to point out that conversion:

> "may be consummated without any intent to keep and without any wrongful taking, where the initial possession by the converter was entirely lawful. Conversion may include misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use." 342 U.S. at 271-272.

In the present case, there was ample evidence introduced at trial for the jury to find that the defendants misused, or aided and abetted the misuse of union property for personal gain through the use of union Group I application forms to sell Group I classifications to unqualified seamen. Taking into account the remedial purposes of the Labor-Management Reporting and Disclosure Act and the Supreme Court's definition of conversion in Morrissette v. United States, supra, the Court finds that the use of the union Group I application forms to sell Group I classifications to unqualified seamen constitutes "conversion" of those forms within the meaning of section 501(c). Defendants' motions to set aside the verdict and to dismiss the indictment are therefore denied.

The Court has reviewed the points raised by Villegas' motion for a new trial and finds them insufficient to support the granting of a new trial. Accordingly, that motion is denied.

It is so ordered.

Dated: New York, N.Y.
November 7, 1974.

Wd B. Bonsal
U. S. D. J.

Certificate of Service

January 6, 1975

I hereby certify that copies of the joint appendix for appellants Robinson, Alvarez, and Villegas have been served by mail on the following:

The Honorable Paul J. Curran
United States Attorney
Southern District of New York

Samuel M. Zuckerman, Esq.,
Attorney for Appellant Robinson

Manuel Taxel, Esq.
Attorney for Appellant Alvarez

Phyllis Sheldon Baenberger